

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

MELVIN H. SEROSKY,)	PCHB No. 93-85
)	
Appellant,)	
)	
v.)	FINAL FINDINGS OF FACT
)	CONCLUSIONS OF LAW, AND
STATE OF WASHINGTON,)	ORDER
DEPARTMENT OF ECOLOGY,)	
)	
Respondent.)	
<hr/>		

This matter came before the Board on an appeal by Melvin Serosky, Jr. ("Serosky"), of a Report of Examination issued by the Department of Ecology ("Ecology") regarding an application for groundwater rights by Mike Brown and L.C. Guis, now deceased, (collectively, "Brown"). A hearing was held in Lacey on April 5, 1994. Present for the Board were Richard C. Kelley, who presided, Robert V. Jensen, Chairman, and James A. Tupper, Jr. Appearing for the parties were C.E. Hormel, attorney, for Serosky; Patrick Acres, attorney, for Brown, and Jo Messex Casey, Assistant Attorney General, for Ecology. The proceedings were recorded by Lenore Schatz, of Gene Barker and Associates, Olympia.

Witnesses were sworn and testified, exhibits were introduced and examined, and the Board considered the arguments of the parties. Based on the above, the Board makes these

FINDINGS OF FACT

I

On December 14, 1989, Gary Maughan submitted an application for a ground water permit for irrigation of land on Smyrna Bench, on the North flank of the Saddle Mountains in

1
2 Grant County Ecology assigned it No G328697 Maughan assigned the application to
3 Brown on May 13, 1991.

4 II.

5 On April 14, 1993, Ecology issued a Protested Report of Examination ("ROE")
6 recommending approval of a portion of the requested amount of water: 8,400 gallons per
7 minute maximum, 5.250 acre feet per year, for the seasonal irrigation of 1,500 acres.

8 III

9 On April 29, 1993, Serosky, one of the original protestants, filed an appeal with the
10 Board of the ROE

11 IV

12 The ROE used both the terms "Family Farm Permit" and "Family Farm Development
13 Permit" to describe the recommended permit.

14 V

15 Smyrna Bench slopes very gently South to North, approximately 6% to 7% on average,
16 with some areas steeper, up to about 15%. The Saddle Mountains were extensively faulted in
17 the Pre-Pleistocene Era, which created Smyrna Bench. The Bench face overlooking the Crab
18 Creek valley was carved by glacial action and related flooding in the Pleistocene Era, 12,000
19 to 15,000 B.P The fault line which runs parallel the Bench along the south side of the Bench
20 near the uphill face of the Mountains has not been significantly active since that time. That
21 fault line lies to the uphill side of the proposed irrigation.

22 VI.

23 The soil in the area of the proposal is fertile, not extremely fine, and suitable for
24 irrigation.

1
2 VII.

3 Smyrna Bench is semi-arid, receiving approximately 6 to 8 inches of rain per year on
4 average. Dryland farming has generally been unsuccessful. Irrigated farming is a beneficial
5 use of the available ground water.

6 VIII.

7 The proposed withdrawal would have no significant effect on the wells of Serosky or
8 other neighbors, and would not negatively affect any senior rights.

9 IX.

10 In the 1970's excessive irrigation probably contributed to a landslide in the Taunton
11 area of Adams County, 10 to 15 miles away, which also sits on the North slope of the Saddle
12 Mountains. Another slide occurred closer, at Corfu, about 4 miles away, of undetermined
13 origin

14 X.

15 Serosky argued that the Taunton slide demonstrated the instability of the Bench and its
16 inability to absorb irrigation water without liquifying and sliding. However, unrebutted
17 geological evidence differentiated the structure of the Taunton area from that of the Smyrna
18 area, as well as distinguishing the soils of the proposal site from the much finer soils around
19 Taunton. We find no conclusion can be drawn from the Taunton slide history regarding the
20 effect of irrigation on the bench above Smyrna. We also find that irrigation at appropriate
21 levels of efficiency poses no significant threat of landslide to downhill properties.

22 XI.

23 The amount of water recommended by Ecology in the ROE is based on the factors
24 developed by Washington State University, including a factor of about 70% for efficiency in
25 utilization of applied water by the intended crops. This level of efficiency is far in excess of
26 /

1
2 that of the "rill" method of irrigation, which may have led to the Taunton slide, but is less than
3 that of the state-of-the-art circle systems currently used elsewhere by Brown and intended for
4 use under this permit. Such systems may further reduce water usage by adding drag tubes and
5 low pressure nozzles.

6 XII.

7 Brown owns or otherwise controls acreage in the area in excess of 2,000 acres.

8 XIII.

9 Any conclusion of law deemed to be a finding of fact is adopted as such.

10 Based on the above findings, the Board makes these

11
12 CONCLUSIONS OF LAW

13 I.

14 The Board has jurisdiction under RCW 43.21B and RCW 90.03.

15 II.

16 The burden of proof, by a preponderance of the evidence, lies with the appellant to
17 demonstrate that Ecology erred in its determination that the proposed withdrawal of
18 groundwater meets the statutory conditions for issuance of a permit.

19 III.

20 Serosky argued that Brown, because he owns more than 2,000 acres, is not eligible for
21 a Family Farm Permit under RCW 90 66. We conclude that the Permit recommended for
22 approval in the ROE is a Family Farm Development Permit, and not a Family Farm Permit.
23 Brown's land holdings are thus irrelevant.

24 At the same time, we note that the Initiative which created the Family Farm statute
25 called on Ecology to adopt implementing regulations. Ecology has failed to do so. This
26

1
2 lacuna has forced the Board to interpret "family farm" without a definition of the intended
3 limits of relationships to be considered "family", and to accept at face value the validity of a
4 proposed transfer under a Family Farm Development Permit of land to a family member,
5 which may not have been intended by the drafters of the initiative. We urge Ecology to adopt
6 appropriate definitions as part of implementing regulations for the Family Farm Act.

7 IV

8 We conclude that Serosky failed to meet the burden of proving that Ecology erred in
9 approving the ROE, and that he has failed to demonstrate that existing wells and rights would
10 be damaged by the proposed withdrawal.

11 V

12 Any finding of fact deemed to be a conclusion of law is adopted as such.
13 Based on the above findings and conclusions, the Board enters this
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ORDER

1 The Report of Examination issued by Ecology on April 14, 1993, is approved with two additional conditions:

a) that only circle irrigators with low-pressure nozzles, or other technology of greater efficiency, be used in irrigating the property under this permit; and

b) that excessive irrigation which results in saturation of the soil more than 24 inches below the root line, or which results in any significant recharging of the ground water under the irrigated area, be prohibited as a possible danger to the downhill property owners and a detriment to the public interest.

DONE this 22nd day of April, 1994, at Lacey, Washington.

POLLUTION CONTROL HEARINGS BOARD


RICHARD C. KELLEY, PRESIDING


ROBERT V. JENSEN, CHAIRMAN


JAMES A. TUPPER, JR., MEMBER

P93-85F